

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SENATE BILL 1416

AN ACT

AMENDING TITLE 33, CHAPTER 10, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1318; AMENDING SECTIONS 33-1361 AND 33-1368, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA RESIDENTIAL LANDLORD AND TENANT ACT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Title 33, chapter 10, article 1, Arizona Revised Statutes,
3 is amended by adding section 33-1318, to read:

4 33-1318. Termination by tenant; court order; assault; stalking;
5 notice; definitions

6 A. A TENANT MAY TERMINATE A RENTAL AGREEMENT PURSUANT TO THIS SECTION
7 IF THE TENANT PROVIDES TO THE LANDLORD WRITTEN NOTIFICATION THAT THE TENANT
8 OR A MEMBER OF THE TENANT'S HOUSEHOLD IS THE VICTIM OF ANY OF THE FOLLOWING
9 AND PROVIDES TO THE LANDLORD A WRITTEN DEPARTMENTAL REPORT FROM A LAW
10 ENFORCEMENT OFFICER THAT STATES THAT THE TENANT OR A MEMBER OF THE TENANT'S
11 HOUSEHOLD NOTIFIED A LAW ENFORCEMENT OFFICER THAT THE TENANT OR A MEMBER OF
12 THE TENANT'S HOUSEHOLD WAS A VICTIM OF ANY OF THE FOLLOWING:

- 13 (a) SEXUAL ABUSE, SEXUAL ASSAULT OR SEXUAL CONDUCT WITH A MINOR.
14 (b) STALKING.

15 B. THE TENANT MAY TERMINATE THE RENTAL AGREEMENT PURSUANT TO THIS
16 SECTION ONLY IF THE ACTIONS, EVENTS OR CIRCUMSTANCES DESCRIBED IN THE
17 DEPARTMENTAL REPORT FROM THE LAW ENFORCEMENT OFFICER OCCURRED WITHIN THE
18 NINETY DAY PERIOD IMMEDIATELY PRECEDING THE NOTICE OF TERMINATION TO THE
19 LANDLORD. IF THE TENANT REQUESTS TERMINATION OF THE RENTAL AGREEMENT AS
20 PRESCRIBED BY THIS SECTION, THE TENANT IS LIABLE ONLY FOR RENT OWED OR PAID
21 THROUGH THE END OF THE ONE-MONTH PERIOD IN WHICH THE TERMINATION REQUEST WAS
22 MADE PLUS ANY PAST DUE RENT AND THE AMOUNT OF ANY DAMAGES TO THE PREMISES.
23 THE AMOUNT LIABLE BY THE TENANT SHALL BE DUE AND PAYABLE TO THE LANDLORD ON
24 OR BEFORE VACATING THE PREMISES.

25 C. THE COPY USED TO PROVIDE NOTICE TO THE LANDLORD PURSUANT TO
26 SUBSECTION A OF THIS SECTION SHALL NOT CONTAIN THE NAME OF THE ALLEGED
27 PERPETRATOR.

28 D. IF THE TENANT REQUESTS TERMINATION OF THE RENTAL AGREEMENT AS
29 PRESCRIBED BY THIS SECTION, THE TENANT SHALL AGREE TO ASSIST IN THE
30 PROSECUTION OF THE ALLEGED PERPETRATOR.

31 E. THE NOTIFICATION REQUIRED IN SUBSECTION A OF THIS SECTION SHALL BE
32 PROVIDED TO THE LANDLORD PURSUANT TO THE HEALTH AND SAFETY PROVISIONS OF
33 SECTION 33-1361.

34 F. FOR THE PURPOSES OF THIS SECTION:

35 1. "SEXUAL ABUSE" MEANS AN ATTEMPTED OR COMMITTED OFFENSE PRESCRIBED
36 BY SECTION 13-1404.

37 2. "SEXUAL ASSAULT" MEANS AN ATTEMPTED OR COMMITTED OFFENSE PRESCRIBED
38 BY SECTION 13-1406.

39 3. "SEXUAL CONDUCT WITH A MINOR" MEANS AN ATTEMPTED OR COMMITTED
40 OFFENSE PRESCRIBED BY SECTION 13-1405.

41 4. "STALKING" MEANS AN ATTEMPTED OR COMMITTED OFFENSE PRESCRIBED BY
42 SECTION 13-2923.

1 Sec. 2. Section 33-1361, Arizona Revised Statutes, is amended to read:
2 33-1361. Noncompliance by the landlord

3 A. Except as provided in this chapter, if there is a material
4 noncompliance by the landlord with the rental agreement, including a material
5 falsification of the written information provided to the tenant, the tenant
6 may deliver a written notice to the landlord specifying the acts and
7 omissions constituting the breach and that the rental agreement will
8 terminate upon a date not less than ten days after receipt of the notice if
9 the breach is not remedied in ten days. If there is a noncompliance by the
10 landlord with section 33-1324 materially affecting health and safety, the
11 tenant may deliver a written notice to the landlord specifying the acts and
12 omissions constituting the breach and that the rental agreement will
13 terminate upon a date not less than five days after receipt of the notice if
14 the breach is not remedied in five days. For the purposes of this section,
15 material falsification ~~shall include~~ INCLUDES FALSE INFORMATION RELATING TO
16 availability of the unit, except when a holdover tenant is in illegal
17 possession or in violation of the rental agreement, the condition of the
18 premises and any current services as represented by the landlord in writing
~~as well as any written representation, as well as~~ AND any representation
19 regarding future services and any future changes regarding the condition of
20 the premises, the provision of utility services and the designation of the
21 party responsible for the payment of utility services. The rental agreement
22 shall terminate and the dwelling unit shall be vacated as provided in the
23 notice subject to the following:

24 1. If the breach is remediable by repairs or the payment of damages or
25 otherwise and the landlord adequately remedies the breach prior to the date
26 specified in the notice, the rental agreement will not terminate.

27 2. The tenant may not terminate for a condition caused by the
28 deliberate or negligent act or omission of the tenant, a member of the
29 tenant's family or other person on the premises with the tenant's consent.

30 B. Except as provided in this chapter, the tenant may recover damages
31 and obtain injunctive relief for any noncompliance by the landlord with the
32 rental agreement or WITH section 33-1318 OR 33-1324.

33 C. The remedy provided in subsection B of this section is in addition
34 to any right of the tenant arising under subsection A of this section.

35 D. If the rental agreement is terminated, the landlord shall return
36 all security recoverable by the tenant under section 33-1321.

37 Sec. 3. Section 33-1368, Arizona Revised Statutes, is amended to read:

38 33-1368. Noncompliance with rental agreement by tenant; failure
39 to pay rent; utility discontinuation; liability for
40 guests; definition

41 A. Except as provided in this chapter, if there is a material
42 noncompliance by the tenant with the rental agreement, including material
43 falsification of the information provided on the rental application, the
44 landlord may deliver a written notice to the tenant specifying the acts and

1 omissions constituting the breach and that the rental agreement will
2 terminate upon a date not less than ten days after receipt of the notice if
3 the breach is not remedied in ten days. For the purposes of this section,
4 material falsification shall include the following untrue or misleading
5 information about the:

6 1. Number of occupants in the dwelling unit, pets, income of THE
7 prospective tenant, social security number and current employment listed on
8 the application or lease agreement.

9 2. Tenant's criminal records, prior eviction record and current
10 criminal activity. Material falsification of information in this paragraph
11 is not curable under this section.

12 If there is a noncompliance by the tenant with section 33-1341 materially
13 affecting health and safety, the landlord may deliver a written notice to the
14 tenant specifying the acts and omissions constituting the breach and that the
15 rental agreement will terminate upon a date not less than five days after
16 receipt of the notice if the breach is not remedied in five days. However,
17 if the breach is remediable by repair or the payment of damages or otherwise,
18 and the tenant adequately remedies the breach before the date specified in
19 the notice, the rental agreement will not terminate. If there is an
20 additional act of these types of noncompliance of the same or a similar
21 nature during the term of the lease after the previous remedy of
22 noncompliance, the landlord may institute a special detainer action pursuant
23 to section 33-1377 ten days after delivery of a written notice advising the
24 tenant that a second noncompliance of the same or a similar nature has
25 occurred. If there is a breach that is both material and irreparable and
26 that occurs on the premises, including but not limited to an illegal
27 discharge of a weapon, homicide as **defined PRESCRIBED** in sections 13-1102
28 through 13-1105, prostitution as **defined PRESCRIBED** in section 13-3211,
29 criminal street gang activity as prescribed in section 13-105, activity as
30 prohibited in section 13-2308, the unlawful manufacturing, selling,
31 transferring, possessing, using or storing of a controlled substance as
32 **defined PRESCRIBED** in section 13-3451, threatening or intimidating as
33 prohibited in section 13-1202, assault as prohibited in section 13-1203, acts
34 that have been found to constitute a nuisance pursuant to section 12-991 or a
35 breach of the lease agreement that otherwise jeopardizes the health, safety
36 and welfare of the landlord, the landlord's agent or another tenant or
37 involving imminent or actual serious property damage, the landlord may
38 deliver a written notice for immediate termination of the rental agreement
39 and shall proceed under section 33-1377.

40 B. A tenant may not withhold rent for any reason not authorized by
41 this chapter. If rent is unpaid when due and the tenant fails to pay rent
42 within five days after written notice by the landlord of nonpayment and the
43 landlord's intention to terminate the rental agreement if the rent is not
44 paid within that period of time, the landlord may terminate the rental
45 agreement by filing a special detainer action pursuant to section

1 33-1377. Before the filing of a special detainer action the rental agreement
2 shall be reinstated if the tenant tenders all past due and unpaid periodic
3 rent and a reasonable late fee set forth in a written rental
4 agreement. After a special detainer action is filed the rental agreement is
5 reinstated only if the tenant pays all past due rent, reasonable late fees
6 set forth in a written rental agreement, attorney fees and court
7 costs. After a judgment has been entered in a special detainer action in
8 favor of the landlord, any reinstatement of the rental agreement is solely in
9 the discretion of the landlord.

10 C. The landlord may recover all reasonable damages, ~~—~~ resulting from
11 noncompliance by the tenant with the rental agreement or section 33-1341 or
12 occupancy of the dwelling unit, court costs, reasonable attorney fees and all
13 quantifiable damage caused by the tenant to the premises.

14 D. The landlord may discontinue utility services provided by the
15 landlord on the day following the day that a writ of restitution or execution
16 is executed pursuant to section 12-1181. Disconnections shall be performed
17 only by a person authorized by the utility whose service is being
18 discontinued. Nothing in this section shall supersede standard tariff and
19 operational procedures that apply to any public service corporation,
20 municipal corporation or special districts providing utility services in this
21 state.

22 E. The landlord shall hold the tenant's personal property for a period
23 of twenty-one days beginning on the first day after a writ of restitution or
24 writ of execution is executed as prescribed in section 12-1181. The landlord
25 shall use reasonable care in moving and holding the tenant's property and may
26 store the tenant's property in an unoccupied dwelling unit owned by the
27 landlord, the unoccupied dwelling unit formerly occupied by the tenant or off
28 the premises if an unoccupied dwelling unit is not available. If the
29 tenant's former dwelling unit is used to store the property, the landlord may
30 change the locks on that unit at the landlord's discretion. The landlord
31 shall prepare an inventory and promptly notify the tenant of the location and
32 cost of storage of the personal property by sending a notice by certified
33 mail, return receipt requested, addressed to the tenant's last known address
34 and to any of the tenant's alternative addresses known to the landlord. To
35 reclaim the personal property, the tenant shall pay the landlord only for the
36 cost of removal and storage for the time the property is held by the
37 landlord. Within five days after a written offer by the tenant to pay these
38 charges the landlord must surrender possession of the personal property in
39 the landlord's possession to the tenant upon the tenant's tender of
40 payment. If the landlord fails to surrender possession of the personal
41 property to the tenant, the tenant may recover the possessions or an amount
42 equal to the damages determined by the court if the landlord has destroyed or
43 disposed of the possessions before the twenty-one days specified in this
44 section or after the tenant's offer to pay. The tenant shall pay all removal
45 and storage costs accrued through the fifth day after the tenant's offer to

1 pay is received by the landlord or the date of delivery or surrender of the
2 property, whichever is sooner. Payment by the tenant relieves the landlord
3 of any further responsibility for the tenant's possessions.

4 F. A tenant does not have any right of access to that property until
5 all payments specified in subsection E of this section have been made in
6 full, except that the tenant may obtain clothing and the tools, apparatus and
7 books of a trade or profession and identification or financial documents
8 including all those related to the tenant's immigration status, employment
9 status, public assistance or medical care. If the landlord holds the
10 property for the twenty-one day period and the tenant does not make a
11 reasonable effort to recover it, the landlord, upon the expiration of
12 twenty-one days as provided in this subsection, may administer the personal
13 property as provided in section 33-1370, subsection E. The landlord shall
14 hold personal property after a writ of restitution or writ of execution is
15 executed for not more than twenty-one days after such an execution. Nothing
16 in this subsection shall preclude the landlord and tenant from making an
17 agreement providing that the landlord will hold the personal property for a
18 period longer than twenty-one days.

19 G. For the purposes of this chapter, the tenant shall be held
20 responsible for the actions of the tenant's guests that violate the lease
21 agreement or rules or regulations of the landlord if the tenant could
22 reasonably be expected to be aware that such actions might occur and did not
23 attempt to prevent those actions to the best of the tenant's ability.

24 H. THE LANDLORD MAY RECOVER ALL ACTUAL DAMAGES FROM THE TENANT WHO
25 FACILITATES A FALSE OR FRAUDULENT NOTIFICATION MADE PURSUANT TO SECTION
26 33-1318.

27 ~~H.~~ I. For THE purposes of this section, "days" means calendar days.